

WISHA REGIONAL DIRECTIVE

WISHA Services

Department of Labor and Industries

5.05 Violence in the Workplace

Date: March 17, 2005

I. Background

Violence in the workplace is a major contributor to occupational fatalities and injuries. From 1995 to 2000, an average of 7 Washington workers died each year as a result of workplace homicide, and from 1995-2000 there was an annual average of 2,080 industrial insurance claims for assault and violence-related incidents. Recent years have shown some reduction in the number and rates of violence-related injuries, but homicide remains the second highest cause of workplace fatalities nationally and the fourth highest in Washington state. Homicides are the number one cause of workplace fatalities for women. Washington's unique Late-Night Retail Crime Prevention Standard appears to have prompted a reduction in violent crimes within its scope, but that scope is itself limited to a selected group of retail businesses.

Although there is a degree of uncertainty, workplace violence is not entirely random and unpredictable. In fact, there are clear patterns. Research has repeatedly identified factors associated with incidents of workplace homicide or assault. Based on its analysis of the various research, the National Institute for Occupational Safety and Health (NIOSH) has suggested that the following factors, when placed in combination with other conditions, *may* require attention in some industries (whether these factors in fact suggest a level of workplace exposure to violence that requires employer intervention depends upon a combination of circumstances specific to the individual employer or worksite):

- * Contact with public;
- * Exchange of money;
- * Delivery of passengers, goods, or services;
- * Having a mobile workplace such as a taxicab or police cruiser;
- * Working with unstable or volatile persons in health care, social services, or criminal justice settings;
- * Working alone (working in isolation) or in very small numbers;
- * Working late at night or early morning hours;
- * Working in high-crime areas;
- * Guarding valuable property or possessions;
- * Working in community-based settings.

(from NIOSH Current Intelligence Bulletin 57, June 1996)

II. Scope and Application

This WISHA Regional Directive, which will remain in effect indefinitely, applies whenever WISHA consultation or enforcement staff encounter hazards related to violence in the workplace. It replaces the original WRD 5.05, issued September 25, 1997.

This directive provides guidance to WISHA staff in applying *existing* standards to issues of workplace violence. It does not (and, indeed, cannot) create any obligations for employers not found in existing WAC standards.

For guidance specific to workplace violence in certain health care establishments, see WISHA Regional Directive 5.07.

III. Interpretive Guidance

What existing standards can be used to address hazards related to violence in the workplace?

Several existing provisions of the Washington Administrative Code (WAC) may apply to the hazards of violence in the workplace, including (but not necessarily limited to) the following:

WAC 296-832, the "Late Night Retail Workers Crime Protection Standard," provides specific violence-related direction to retail businesses that operate between 11:00 p.m. and 6:00 a.m. Restaurants, hotels, taverns and lodging facilities are beyond the scope of this rule.

WAC 296-800-14005 requires employers to "Develop a formal accident prevention program that is outlined in writing. The program must be tailored to the needs of your particular workplace or operation and to the types of hazards involved." The program must include "a safety orientation program" that contains (among other things) information about reporting injuries and unsafe conditions, the use and care of personal protective equipment and emergency procedures.

WAC 296-800-14025 requires employers to "Establish, supervise, and enforce your accident prevention program in a manner that is effective in practice."

WAC 296-800-11005 requires employers to "Provide your employees a workplace free from recognized hazards that are causing, or are likely to cause, serious injury or death." WAC 296-800-11010 requires employers to "Provide and use safety devices, safeguards, and use work practices, methods, processes, and means that are reasonably adequate to make your workplace safe" and to "do every other thing reasonably necessary to protect the life and safety of your employees." WAC 296-800-11035 requires employers to "Establish, supervise and enforce rules that lead to a safe and healthy work environment that are effective in practice."

WAC 296-800-16005 requires employers to “Look for and identify hazards or potential hazards in your workplace and determine if PPE is necessary on the job.”

WAC 296-800-16015 requires employers to “Select appropriate PPE for your employees if hazards are present, or likely to be present.” WAC 296-800-16040 requires employers to “Require your employees to use necessary PPE on the job.”

WAC 296-27-01101 requires employers to maintain records of occupational injuries and illnesses.

IV. Special Inspection Protocols

- A. *How must WISHA Enforcement Supervisors handle complaints related to violence in the workplace?*

Each WISHA Enforcement Supervisor must evaluate any complaints alleging a workplace security hazard according to the applicable guidance in Chapter I-C of the WISHA Compliance Manual.

- B. *How must WISHA Enforcement Supervisors handle reported fatalities resulting from workplace violence?*

In the event of a workplace fatality resulting from violence, the supervisor must assign a Compliance Safety and Health Officer (CSHO) with experience appropriate to the situation. The CSHO must take special care not to interfere with any law enforcement activities. He or she must limit the investigation to the questions of whether the employer complied with applicable WISHA requirements, whether any violation of such requirements contributed to the incident, and whether a change in the standards could deal with such situations more effectively.

- C. *How must enforcement staff handle employers subject to the late-night retail crime prevention standard?*

CSHOs must evaluate compliance with WAC 296-832 when inspecting late-night retail employers subject to those requirements and issue citations as appropriate under the standard. If the requirements of the late-night retail standard are met by employers subject to the standard, CSHOs must not use the APP standard to impose more stringent requirements to address the same hazards.

- D. *How should enforcement staff conduct inspections related to workplace violence hazards?*

In evaluating an employer's compliance with existing obligations under the accident prevention program standard (WAC 296-800-14005) as they relate to workplace violence, CSHOs must follow these inspection procedures:

1. The CSHO must be alert to the presence of factors that *may* be associated with an increased risk of workplace violence, especially when inspecting an employer within an industry with a high rate of workplace violence injuries or fatalities. The presence of one or more such factors, including those acknowledged by NIOSH (see background section, above) may not be significant in itself. The CSHO must consider the overall environment to determine whether the potential hazards pose a credible threat of physical injury.

2. When reviewing injury records and conducting interviews of employers, employees and their representatives, the CSHO must be alert to patterns of workplace violence incidents.
3. The CSHO also must review the employer's written accident prevention program to determine whether it addresses any hazards identified by the CSHO.
 - a. If the APP does not address such hazards, then the CSHO must evaluate whether the employer was or clearly should have been aware of the hazard. If so, the CSHO must issue the appropriate violation under WAC 296-800-14005 or the equivalent vertical standard. If not, the CSHO must provide an appropriate advisory "message" on the citation and notice giving the employer the necessary guidance, rather than issuing a "violation" under WISHA.
 - b. If the APP addresses such hazards but is *clearly* insufficient, the CSHO must issue the appropriate violation under WAC 296-800-14005 or the equivalent vertical standard (use of such a test does not allow the CSHO merely to substitute his or her judgment for the employer's with regard to either the extent of hazard or the method of abatement; rather, considerable deference must be paid to the employer's analysis of the hazard and its appropriate abatement).

APP violations related to workplace violence and based on a determination that the APP is insufficient must be issued only after consultation with the Office of the Attorney General and with WISHA Policy & Technical Services.

- c. If the employer effectively addresses such hazards in employee handbooks or other written materials (and if the guidance found in the handbooks or other materials has actually been put into effect by the employer) other than the APP, any APP violation must be treated as *de minimis* and therefore not cited.
 - d. All accident prevention program citations related to workplace violence shall be cited general.
 4. If the APP sufficiently addresses existing workplace violence hazards but is not enforced, the CSHO may issue a violation of WAC 296-800-14025 as appropriate. Such violations must be issued only after consultation with the Office of the Attorney General and with WISHA Policy & Technical Services.
- E. *When should enforcement staff apply the "safe place" standard to workplace violence hazards?*

Safe place citations under WAC 296-800-11005 (or the equivalent requirement in a vertical standard) must be issued only if no specific standard applies and are subject to the guidance in the WISHA Compliance Manual (Section IV-10.B.2). This detailed guidance describes the appropriate approach in determining the presence of the following four elements of any safe place citation: 1) the

employer must have failed to keep the workplace free of a hazard to which employees of that employer were exposed; 2) the hazard must be recognized by the employer, by the industry, or by “common sense;” 3) the hazard must be causing or likely to cause death or serious physical harm; and 4) there was a feasible and useful method to correct the hazard.

CSHOs attempting to determine if a particular workplace violence hazard is “recognized” must pay particular attention to the guidance in the WISHA Compliance Manual to determine whether the hazard is recognized and could therefore have been reasonably anticipated by the employer. Safe place violations related to workplace violence must be issued only after consultation with the Office of the Attorney General and with WISHA Policy & Technical Services.

F. *When should enforcement staff cite “management responsibility” in relation to a specific workplace violence incident?*

When staff encounter situations related to employee on employee (Type 3) violence, or other situations involving a specific situation where the employer may have failed to provide sufficient protection, staff must take care not to base their conclusions solely on the fact that an incident occurred. A citation of WAC 296-800-11035 in such circumstances may be issued only if the department concludes that the employer clearly failed to respond in a reasonable manner based on what the employer knew or clearly should have known at the time of the incident.

Such “management responsibility” violations related to workplace violence must be issued only after consultation with the Office of Attorney General and with WISHA Policy & Technical Services.

G. *What about personal protective equipment?*

If personal protective equipment (PPE) would be an appropriate response to any identified hazards, the CSHO must determine whether the employer performed an analysis of hazards that might necessitate the use of PPE, as required by the PPE standard (WAC 296-800-16005). If the hazard is recognized and no such analysis has been performed, the CSHO must issue the appropriate citation under WAC 296-800-16005. If the employer has performed the required analysis, the CSHO must determine whether the decisions resulting from the analysis were reasonable (use of such a test does not allow the CSHO merely to substitute his or her judgment for the employer's with regard to the hazard and its appropriate abatement).

PPE violations related to workplace violence must be issued only after consultation with the Office of the Attorney General and with WISHA Policy & Technical Services.

H. *What relationship do voluntary L&I guidelines have to workplace violence inspection activities?*

Voluntary workplace violence guidelines issued by L&I may not be used as a basis for citation, nor may such guidelines be used to demonstrate an employer's knowledge of a hazard for enforcement purposes.

I. *How should CSHOs code workplace violence inspections for purposes of tracking and future data analysis?*

All inspections where workplace violence issues are reviewed, whether cited or not, must be coded "17-S Workplace Violence" in box 42 on the WISHA 1 form. All consultations where workplace violence issues were reviewed must be coded "P 03 Workplace Violence" in box 34 on the State Visit Report, Consultation-30 Form.

Approved: _____
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For further information about this or other WISHA Regional Directives, you may contact WISHA Policy & Technical Services at P.O. Box 44648, Olympia, WA 98504-4648 -- or by telephone at (360)902-5503. You also may review policy information on the WISHA Website (<http://www.lni.wa.gov/Safety/>).